Supreme Court, U.S.
FILED

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CASE NO OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1995

CARL J. DUNCAN,

Petitioner,

vs.

RITA KAY DUNCAN, a/k/a
RITA KAY SCOTT, a/k/a
RITA KAY YOUNG,
EDWARD M. JACKSON,
LAWRENCE M. LITUS, and
GEOFFREY G. STRANGE,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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106 pp

QUESTIONS PRESENTED

1. When a district court so far departs from the essential requirements of law as to reverse final state court judgments and thereby reinstate a judgment of illegal actions against state court judges as premised in the complaint, and in so doing possibly implicates federal judges, is judgment valid and/or the complaint frivolous?

2. Does judicial integrity require federal judges to enforce the federal law and Constitution against judicial officials and/or require equal protection, due process, and equal treatment/opportunity to both non-attorney pro se plaintiff and attorney represented defendants?

3. Is a Rule 4(a)(4), Fed.R.App.P., bar to review an award of fees and costs on appeal created by a Rule 59, Fed.R.Civ.P., motion addressing a separate and independent issue of fees and costs denied and specifically not appealed?

TABLE OF CONTENTS[1]

	Page
Questions Presented	i
Table of Contents	ii
Table of Citations	v
Opinions of Other Courts	1
Statement of Jurisdiction	3
Legal Authorities Involved	4
Statement of the Case	11
Reasons for Granting the Writ	
1. When a district court so far departs from the essential requirements of law as to reverse final state court judgments and thereby reinstate a judgment of illegal actions against state court judges as premised in the complaint, and in so doing possibly implicates federal judges, is judgment valid and/or the complaint frivolous?	23
2. Does judicial integrity require federal judges to enforce the federal law and Constitution against judicial officials and/or require equal protection, due process, and equal treatment/opportunity to both non-attorney pro se plaintiff and attorney represented defendants?	32

[1] All parties are named. No companies exist.

Page

3. Is a Rule 4(a)(4), Fed.R. App.P., bar to review an award of fees and costs on appeal created by a Rule 59, Fed.R.Civ.P., motion addressing a separate and independent issue of fees and costs denied and specifically not appealed? 36

Appendix

A. December 21, 1994 Eleventh Circuit Opinion 1a

B. December 21, 1994 Eleventh Circuit Judgment 2a

C. September 23, 1993 Eleventh Circuit Order Denying Appeal of the Award of Fees and Costs 4a

D. October 23, 1992 District Court Order of Dismissal 6a

E. October 14, 1992 District Court Hearing Transcript Excerpts 9a

F. July 3, 1991 Florida Supreme Court Decision 11a

G. November 6, 1990 Florida Fifth District Court of Appeal Mandate 12a

H. December 11, 1990 Florida Fifth District Court of Appeal Order Concurring with Appellant's Motiom for Clarification Interpreting the Mandate 13a

Page

I. December 21, 1990 Florida Fifth District Court of Appeal Order Denying Motion to Correct Mandate 14a

J. March 29, 1991 Florida Eighteenth Judicial Circuit Order Dismissal for Lack of Subject Matter Jurisdiction 15a

K. May 23, 1990 Florida Eighteenth Judicial Circuit Order Declaring the Final Judgment Unenforceable for Lack of Subject Matter Jurisdiction ab initio 17a

L February 15, 1990 Florida Eighteenth Judicial Circuit Null and Void Final Judgment Dissolving Marriage 20a

M. Excerpts from February 2, 1990 Florida Eighteenth Judicial Circuit "Trial" Transcript 25a

N. May 23, 1995 Eleventh Circuit Court of Appeals Order Denying Rehearing 30a

O. March 30, 1993 United States District Court for the Northern District of Florida Corrected Judgment 31a

P. March 26, 1993 United States District Court for the Northern District of Florida Order Denying Rehearing and Clarification and Awarding Fees and Costs 33a

Page

Q. Notice of Appeal 37a

R. Excerpts from Complaint Filed in the United States District Court for the Northern District of Florida 39a

S. Legal Authorities Involved (page numbers cited in Table of Citations)

TABLE OF CITATIONS

Cases

Baker v. Carr, 369 U.S. 186, 82 S.Ct. 691, 7 L.Ed.2d 663 (1962) 30

Budinich v. Becton Dickinson and Company, 486 U.S. 196, 108 S.Ct. 1717, 100 L.Ed.2d 178 (1988) 30, 40

Chapman v. State of California, 386 U.S. 18, 87 S.Ct. 824 (1966) 34

Duncan v. Cowart, 584 So.2d 997 (Fla. 1991) 2, 18

Duncan v. Duncan, 571 So.2d 482 (Fla. 5th DCA 1990) 1, 18

Duncan v. Duncan, 43 F.3d 677 (11th Cir. 1994) 3

Howlett v. Rose, 493 U.S. 963, 110 S.Ct. 2430, 110 L.Ed.2d 332 (1990) 30

Page

Marshall v. Jerrico, Inc.,
446 U.S. 238, 100 S.Ct. 1610,
64 L.Ed.2d 182 (1980) 30

Parker Bros. v. Fagan,
68 F.2d 616 (5th Cir. 1934),
cert. den., 292 U.S. 638,
54 S.Ct. 719, 78 L.Ed. 1490 30

Polk Co. v. Glover,
305 U.S. 5, 5 S.Ct. 15,
83 L.Ed. 6 (1938) 30

Scheuer v. Rhodes,
416 U.S. 232, 94 S.Ct. 1683,
40 L.Ed.2d 90 (1970) 29

Other

Art. 1 S. 8(9), U. S. Const. 4, 27

Art. I S. 8(14), U. S. Const. 4, 26

Art. III S. 1, U. S. Const. 5, 27

Art. III S. 2(1), U. S. Const. 5, 27

Art. IV S. 2(1), U. S. Const. 5, 27

Art. VI(2), U. S. Const. 5, 26

Amend. 1, U. S. Const. 6, 27

Amend. 7, U. S. Const. 6, 27

Amend. 14 S. 1, U. S. Const. 6, 27, 43a

Title 18, United States Code
Section 1341 9, 27, 45a

Title 28, United States Code
Section 453 6, 34

	Page
Title 28, United States Code Section 1254(1)	3, 6
Title 28, United States Code Section 1257(a)	7, 28
Title 28, United States Code Section 1331	7, 28
Title 28, United States Code Section 1339	7, 28
Title 28, United States Code Section 1343(a)	7, 28, 44a
Title 28, United States Code Section 1652	8, 28
Title 39, United States Code Section 3001(a)	8, 27
Title 39, United States Code Section 3005(a)	8, 27
Title 42, United States Code Section 1983	9, 27, 46a
Title 42, United States Code Section 1985(b & c)	9, 27, 47a
Chapter 117, Fla. Stat.	9, 49a
Section 817.155, Fla. Stat.	9, 50a
Section 817.38, Fla. Stat.	9, 51a
Section 817.39(1), Fla. Stat.	9, 52a
Chapter 837, Fla. Stat.	9, 53a
Fed.R.Civ.P. 8(b)	10, 29
Fed.R.Civ.P. 8(c)	10, 29

	Page
Fed.R.Civ.P. 8(d)	10, 29
Fed.R.Civ.P. 12(b)	11, 29, 55a
Fed.R.Evid. 302	9, 28

OPINIONS OF OTHER COURTS

STATE

The "decision and original final judgment" of the Florida Eighteenth Judicial Circuit denying Petitioner's defenses and granting all of Respondent R. Duncan's prayers for relief in Duncan v. Duncan, Case No. 89-12080-FD-D (Brevard County) is unreported. (App. L, 20a-25a). The final post-judgment Order of the Eighteenth Judicial Circuit declaring the "original final judgment" unenforceable for want of subject matter jurisdiction and authority of law ab initio is unpublished. (App. K, 17a-20a). The decision of the Florida Fifth District Court of Appeal affirming the post-judgment Order is incompletely published. Duncan v. Duncan, 571 So.2d 482 (Fla. 5th DCA 1990). (App. G, 12a). The decision and final judgment of the Eighteenth Judicial Circuit refusing to allow enforcement of the "original judgment" or to allow the case to be used to

be used to redress grevience on grounds of lack of subject matter jurisdiction ab initio, but authorizing collateral attack, is unpublished. (App. J, 15a-17a).

The decision and final judgment of the Florida Supreme Court concurring with the above rulings but refusing to issue a writ of mandamus requiring the Fifth District Court of Appeal to recall its mandate and to issue one stating that the "original trial court final judgment" is vacated is published. Duncan v. Cowart, 584 So.2d 997 (Fla. 1991). (App. F, 11a).

FEDERAL

The decision of the United States District Court for the Northern District of Florida to dismiss the cause with prejudice on the merits in Duncan v. Duncan, et al., Case No. 92-40291-MMP is not published. (App. D, 6a-8a). The decision of the District Court to deny rehearing and clarification, and awarding or denying various attorneys' fees and costs to vari-

ous Respondents is unpublished. (App. P, 33a-37a). The corrected final judgment of the District Court is unpublished. (App. O, 31a-33a). The decision and final judgment of the United States Eleventh Circuit Court of Appeals is reported. Duncan v. Duncan, 43 F.3d 677 (11th Cir. 1994). (App. A & B, 1a-4a).

The Order of the United States Eleventh Circuit Court of Appeals denying appeal of the award of fees and costs, which is also sought to be reviewed, is unpublished. (App. C, 4a-6a).

STATEMENT OF JURISDICTION

This Court's jurisdiction to review a decision(s) of the United States Court of Appeals for the Eleventh Circuit which affirmed a decision(s) of the United States District Court for the Northern District of Florida is provoked pursuant to Title 28, United States Code Section 1254(1).

The decision and final judgment of the Eleventh Circuit was filed and entered on December 21, 1994. A petition for rehearing was timely filed. Rehearing was denied and the order filed May 23, 1995. This Petition for Writ of Certiorari is timely filed within 90 days of May 23, 1995, by August 21, 1995.

LEGAL AUTHORITIES INVOLVED

Art. I S. 8(9), U. S. Const.

To constitute tribunals inferior to the Supreme Court

Art. I S. 8(14), U. S. Const.

To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the Government of the United States, or in any department or officer thereof.

Art. III S. 1, U. S. Const.

The judicial power of the United States, shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish.

Art. III S. 2(1), U. S. Const.

The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States . . . .

Art. IV S. 2(1), U. S. Const.

The citizens of each State shall be entitled to all privileges and immunities of citizens in the United States.

Art. VI (2), U. S. Const.

This Constitution, and the laws of the United States which shall be made in pursuance thereof . . . shall be the supreme law of the land; and the judges in every State shall be bound thereby, any-

thing in the constitution or laws of any state to the contrary notwithstanding.

Amend. I, U. S. Const.

Congress shall make no law . . . abridging . . . the right of the people . . . to petition the Government for a redress of grievance.

Amend. 7, U. S. Const.

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved . . . .

Amend. 14 S. 1, U. S. Const.

(See App. S, 43a-44a)

Title 28, United States Code S. 453

(See App. S, 56a-57a)

Title 28, United States Code S. 1254(1) (in pertinent part)

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods: (1) By writ of certiorari

granted upon petition of any party to any civil . . . case . . . after rendition of judgment or decree.

Title 28, United States Code S. 1257(a) (in pertinent part)

Final judgments or decrees rendered by the highest court of a State in which a decision could be had may be reviewed by the Supreme Court by writ of certiorari....

Title 28, United States Code S. 1331

The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

Title 28, United States Code S. 1339

The district courts shall have original jurisdiction of any civil action arising under any Act of Congress relating to the postal service.

Title 28, United States Code S. 1343(a) (in pertinent part)

(See App. S, 44a-45a)

Title 28, United States Code S. 1652 (in pertinent part)

The laws of the several states, except where the Constitution . . . or Acts of Congress otherwise require or provide, shall be regarded as rules of decision in civil actions in the courts of the United States, in cases where they apply.

Title 39, United States Code S. 3001(a) (in pertinent part)

Matter the deposit of which in the mails is punishable under section . . . 1341 . . . of Title 18 . . . is nonmailable.

Title 39, United States Code S. 3005(a) (in pertinent part)

Upon evidence satisfactory to the Postal Service that any person is engaged in conducting a scheme or device for obtaining money or property through the mail by means of false representation.... For purposes of the proceeding sentence, the mailing of matter which is nonmailable.

Title 18, United States Code S. 1341

(See App. S, 45a-46a)

Title 42, United States Code S. 1983

(See App. S, 46a-47a)

Title 42, United States Code S. 1985(b & c)

(See App. S, 47a-48a)

Ch. 117, Fla. Stat. (in pertinent part)

(See App. S, 49a-50a)

S. 817.155, Fla. Stat. (in pertinent part)

(See App. S, 50a-51a)

S. 817.38, Fla. Stat. (in pertinent part)

(See App. S, 51a-52a)

S. 817.39(1), Fla. Stat. (as applicable)

(See App. S, 52a)

Ch. 837, Fla. Stat (in pertinent part)

(See App. S, 53a-55a)

Rule 302, Fed.R.Evid.

In civil actions and proceedings, the effect of a presumption respecting a fact

which is an element of a claim or defense as to which State law supplies the rule of decision is determined in accordance with State law.

Rule 8(b), Fed.R.Civ.P. (in pertinent part)

A party shall state in short and plain terms the party's defenses to each claim asserted and shall admit or deny the averments upon which the adverse party relies.

Rule 8(c), Fed.R.Civ.P. (in pertinent part)

In pleading to a preceding pleading, a party shall set forth affirmatively . . . estoppel . . . res judicata . . . and any other matter constituting an avoidance or affirmative defense.

Rule 8(d), Fed.R.Civ. P. (in partinent part)

Averments in a pleading to which a responsive pleading is required . . . are admitted when not denied in a responsive pleading.

Rule 12(b), Fed.R.Civ.P.

(See App. S, 55a-56a)

STATEMENT OF THE CASE

A. Percedural History

The cause began on August 2, 1989 with the filing by Respondents Duncan and Litus of a fraudulent Petition for Dissolution of Marriage to dissolve a non-existent Marriage. The Petitioner was brought into the action by mail fraud. He then began a 9½ month defense of fraud. Respondents Strange and Jackson joined Respondents Litus and Duncan. A kankeroo trial was held on February 2, 1990 where the "court" denied a change of venue on grounds the Florida Second Judicial Circuit also conducts illegal actions. (App. M, 25a-30a). It then granted all of Respondent Duncan's prayed relief. (App. App. L, 20a-25a). A timely and proper appeal was made to the Florida District Court of Appeal, Fifth District.

Respondents Duncan and Strange then sought to enforce the final judgment by contempt and Petitioner moved alternatively for contempt or a stay on grounds of lack of subject matter jurisdiction ab initio supported by massive evidence and an offer to produce more. The court held on May 23, 1990 that the "original final judgment" was satisfied, uneforceable, null/void for want of subject matter jurisdiction ab initio. (App. K, 17a-20a). This was included in the unopposed initial appellate brief. The Fifth District Court of Appeal then issued on November 6, 1990 a PER CURIAM. AFFIRMED. mandate on 8½-inch by 14-inch paper contrary to its own rules that the mandate be on 8½-inch by 11-inch paper. (App. G, 12a).

Petitioner sought clarification asking that such be denied as moot if the mandate means the court affirmed the May 23, 1990 order and asking for clarification if the appellate court was intentionally upholding

BEST AVAIL

a crime. The Fifth District Court of Appeals declared it had affirmed the May 23, 1990 Order. (App. H, 13a) Petitioner then moved to correct the order which was properly denied as a corrected mandate as to paper size would change the mandate's meaning. (App. I, 14a-15a).

Petitioner then went back to the trial court to enforce the mandate, alternatively to vacate the mandate and allow a redress of grievance based on what was already in the record and new findings of fraud. The Eighteenth Judicial Circuit denied all motions and refused to entertain a motion for appellate costs on grounds of lack of subject matter jurisdiction ab initio, but authorized collateral attack. (App. J, 15a-17a).

Petitioner than petitioned the Florida Supreme Court for a writ of mandamus on grounds all judicial authorities agreed he was the victim of a kankeroo action and the current order would and was causing

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he and the judicial problems for which he wanted the Fifth District Court of Appeal to recall its mandate and issue one vacating the "original final judgment." The Florida Supreme Court issued a ruling that says it considered the arguments, makes no statement that it disagrees that Petitioner was a victim of a kankeroo action, states no desire to become the first supreme court in the United States to mandate vacation of null and void judgments, makes no reference to a finding that the Fifth District Court of Appeal mandate is other than had been determined, and denied the writ. (App. F, 11a).

Petitioner then filed a civil rights action to redress injury pursuant to Title 42, United States Code, Sections 1983 and 1985 in the United States District Court for the Northern District of Florida. The District Court dismissed the complaint with prejudice based on the merits and a finding that Petitioner is divorced (App.

E, 9a-10a). It issued an Order holding that it finds the complaint to be a frivolous attempt to review state court actions on a matter which several state appellate courts had denied relief as had the Federal District Court for the Middle District of Florida. (App. D, 6a-8a). Petitioner sought rehearing and clarification and all Respondents sought fees and/or costs. The District Court denied rehearing and clarification, denied some of the requests for fees and costs while granting others, and issued an order to that effect. (App. P, 33a-37a). It issued a corrected judgment on March 30, 1995. (App. O, 31a-33a). Appeal was taken. (App. Q, 37a-39a).

The United States Circuit Court of Appeals for the Eleventh Circuit severed from the appeal a review of all awards of costs and fees (App. C, 4a-6a) and twice thereafter denied proper and timely motions for reconsideration. It affirmed the District Court's ruling (App. A & B,

1a-4a) and denied rehearing on May 23, 1995. (App.N, 30a-31a).

B. Statement of the Facts

On August 2, 1989 Respondents Litus and Duncan filed a fraudulent complaint with the clerk of the Florida Eighteenth Judicial Circuit seeking dissolution of a non-existent marriage. They served/caused to be serve copy thereof on Petitioner via the United States Postal Service. Petitioner responded on grounds of insufficient process, insufficiency of service of process, lack of jurisdiction to his person, fraud, and failure to state a claim upon which relief could be granted. He sought a change of venue so he could physically access the court, a 90-day extension of time, and appointment of counsel. When Respondents Jackson and Strange entered the affair, they actively promoted the crime(s). All of Petitioner's motions were denied and Respondent Duncan filed an amended petition

raising new demands. Petitioner now sought a 90-day stay of proceedings and a dismissal for improper forum, failure to state a valid cause, fraud, fraud on the court, lack of jurisdiction to his person, and denial of due process and equal protection of the law.

At the kankeroo trial, Respondent Duncan told the "court" under oath that the cause was non-existent after which the "court" granted a dissolution of a non-existent marriage. (App. L, 20a-25a). Petitioner appealed to the Florida Fifth District Court of Appeal; but before the initial brief was filed, Respondents Duncan and Strange tried to enforce the "judgment" by contempt and Petitioner moved for contempt, alternatively for a stay on grounds the court lacked subject matter jurisdiction and authority of law ab initio. He supported this with massive evidence and an offer to produce more. The court agreed that Petitioner had proven a violation of

sections of Chapters 117, 817, and 837 of the Florida Statutes (App. S, 49a-55a) plus fact that the marriage sought to be dissolved is non-existent. It agreed that the court never had subject matter jurisdiction or authority of law and therefore its "final judgment" is null and void and unenforceable. The Florida Fifth District Court of Appeal affirmed this fact. Duncan v. Duncan, 571 So.2d 482 (Fla. 5th DCA 1990). (App. G, 12a). The Florida Supreme concurred. Duncan v. Cowart, 584 So.2d 997 (Fla. 1991).

On March 27, 1991 the Eighteenth Judicial Circuit again refused to allow the "original judgment" to be enforced for lack of subject matter jurisdiction and also refused to entertain a motion for appellate costs or to restore the status quo to time prior to the August 2, 1989 event, in addito denying other matters all on grounds of lack of subject matter jurisdiction. (App. J, 15a-17a).

The Petitioner then brought a civil rights suit against the Respondents in the United States District Court for the Northern District of Florida wherein he averred that he is suing them for what they did in their proper persons and demanding a trial by jury. (App. R, 39a-40a). The complaint lays out grounds to show mail fraud and notes the actions done by Respondent Jackson in his proper person as compared to those actions he did in his "official capacity." It claims that the actual events are already adjudicated by state courts to include the Florida Supreme Court. (App. R, 42a-43a).

Respondent Litus filed an answer with no defenses. Respondent Duncan filed an answer and raised a defense of failure to state a claim upon which relief could be had; but she failed to reply to Petitioner's response that the complaint does meet the requirements of pleading; nor did she appear at the October 14, 1992 hearing on

her motion to dismiss to explain what she had in mind. (App. E, 9a-10a). Had she made such an appearance, Petitioner was ready with a prefiled motion for summary judgment which Respondent Jackson was moving to block with a continuance.

Neither Respondents Jackson or Strange filed answers but both filed motions to dismiss. Strange filed an affirmative defense of estoppel or res judicata misnomed to be a defense of lack of subject matter jurisdiction and a defense of violation of Rule 11, Fed.R.Civ.P. Jackson filed affirmative defenses of immunity disquised as lack of subject matter jurisdiction. Respondent Litus moved to join in these defenses. Petitioner opposed all such motions.

At the October 14, 1992 hearing, Respondent Litus sua sponte told the court he had committed some of the crimes stated in subparagraph 4k of the complaint. (See App. R, 41a). Both Jackson and Strange

not only admitted to the District Court that everything in the complaint was and is true, but went out of their way not to deny it. Jackson, through his attorney, hammering away that the District Court should ignore rulings of the United States Supreme Court that in order for a judge to granted absolute immunity he must have been acting both with subject matter jurisdiction and authority of law and arguing that both the United States District Court for Middle District of Florida and the Florida Second Judicial Circuit had denied relief on the same matters, notwithstanding he has never stated on the record what the cases are he is alluding to as they are not present on the face of the complaint.

On the other hand, the trial judge asked Petitioner if the Florida Fifth District Court of Appeal had affirmed the May 23, 1990 Order of the Florida Eighteenth Judicial Circuit and Petitioner replied that it had. The trial judge then would

not allow Petitioner to argue his motion for summary judgment which not only would have rebutted what Petitioner thought the Respondents were trying to show, but would have shown that United States District Judge Fa. :ett did NOT rule that she upholds illegal actions contrary to the law.

Subsequently the District Court granted dismissal and later denied rehearing and clarification while granting certain motions for fees and costs. Appeal was taken with the results that a review of the award of costs and fees was severed from the appeal and subsequently the Eleventh Circuit Court of Appeal held that the District Court could review final state court judgments and ignore Acts of Congress and precedences of the United States Supreme Court.

REASONS FOR GRANTING THE WRIT

1. WHEN A DISTRICT COURT SO FAR DEPARTS FROM THE ESSENTIAL REQUIREMENTS OF LAW AS TO REVERSE FINAL STATE COURT JUDGMENTS AND THEREBY REINSTATE A JUDGMENT OF ILLEGAL ACTIONS AGAINST STATE COURT JUDGES AS PREMISED IN THE COMPLAINT, AND IN SO DOING POSSIBLY IMPLICATES FEDERAL JUDGES, IS JUDGMENT VALID AND/OR THE COMPLAINT FRIVOLOUS?

This question invokes this Court's power of supervision in deciding whether or not a United States court of appeals can sanction a departure from the accepted and usual course of judicial proceedings to such an extent as to disregard law and United States Supreme Court controlling precedences while at the same time allow a United States district court to usurp this Court's power by sanctioning the district court's review of final state court judgments. Secondary questions are whether or not such a departure results in a valid judgment and whether or not such a departure is premise to a finding of filing a frivolous complaint.

This question is unique, as relates to the issues. If the judgment cannot be enforced or relied upon, is it valid? If the Petitioner relies upon the judgment in terms that it upholds some of the facts averred in the complaint, is the complaint frivolous? What is subject matter jurisdiction and did the district court have jurisdiction and authority of law to make its ruling? If the district court lacked jurisdiction and authority of law to make its ruling, is the judgment valid?

The complaint says in paragraph 1 that the Respondents are sued for actions done in their proper person. (App. R, 40a). It describes several illegal activities subject now to a redress of grievance as witness subparagraphs 4k and 4n of the complaint. (App. R, 41a). It claims these crimes are facts adjudicated by Florida courts as witness subparagraph 4w of the complaint. (App. R, 42a-43a). It claims in paragraph 6 of the complaint that Peti-

tioner cannot get a redress of grievance in the state courts. (App. R, 43a). It says in subparagraph 4s that Respondent Jackson held that the Florida Second Judicial Circuit does not uphold or abide by the law. (App. R, 42a).

The record on appeal to the Eleventh Circuit shows that based on motions to dismiss heard by the District Court on October 14, 1992, no Respondent denied or refuted any allegation in the complaint to include that Respondent did not tell the trial court that he acted with subject matter jurisdiction and authority of law and no Respondent disagreed that these are already adjudications of state courts. What the Respondents said was that the Second Judicial Circuit and the United States District Court for the Middle District of Florida held that judgments premised on fraud, perjury, and no valid cause are legal when tried in courts acting without subject matter jurisdiction and authority of law and

the "judge" therein is entitled to absolute immunity. The Respondents have never identified these cases. The Petitioner did offer to refute this and defend the courts and judges accused by a motion for summary judgment which the trial court refused to entertain. The District Court then dismissed based on the Respondents' alleged cases and by reversing final state court judgments. (App. D, 6a-8a). The Eleventh Circuit affirmed based on these matters. (App. B, 2a-4a). This is a gross departure from the usual course of judicial procedings and contrary to law and this Court's rulings.

Only Congress can make laws to enforce the Constitution. Art. I S8(14), U. S. Const. The United States Constitution and federal law are the supreme law of the land and even state judges are bound by it. Art. VI(2), U. S. Const. Citizens may have disputes to redress grievance heard in federal courts and Congress may not abridge

this right. Amend. 1, U. S. Const. The federal courts have authority to hear such cases. Art. III S. 2(1), U. S. Const. And when such case is requested to be heard by jury, it cannot be denied. Amend. 7, U. S. Const. All federal courts have this power. Art. 1, S.8(9), U. S. Const.; Art. III S. 1, U. S. Const.

Citizens in every state are entitled to the same priviliges and immunities as citizens in every other state. Art. IV S. 2(1), U. S. Const. No state can deny due process and equal protection in defense of life, liberty, or property. Amend. 14 S. 1, U. S. Const. Denial of equal protection, privileges and immunities can be redressed. 42 U.S.C. S. 1983. Denial of due process, equal protection, or a privilege or immunity is a federal offense. 42 U.S.C. S. 1985(b & c). Using the United States Postal Service to commit a crime constitutes mail fraud. 18 U.S.C. S. 1341; 39 U.S.C. SS 3001(a) and 3005(a). Federal

district courts have original jurisdiction to decide issues involving the postal service -- 28 U.S.C. S. 1339 -- and civil rights violations. 28 U.S.C. SS. 1331 and 1343(a).

When a complaint alleges violations of several state statutes, the court must accept those laws as rules of decision. 28 U.S.C. S. 1652. Also, when the complaint avers that state courts have already adjudicated that Petitioner was the victim of a kankeroo action, the trial and appellate courts must presume the truth of the averment. FRE R302. The lower courts cannot assume that the state courts authorized violations of Amendment 14 Section 1 and Article VI(2) of the United States Constitution and reverse those state court final judgments. Only the Supreme Court of the United States can review final state court decisions. 28 U.S.C. S. 1257(a). Failure to state a cause upon which relief can be had and

lack of subject matter jurisdiction are permissible defenses to raise prior to filing an answer to a complaint. Fed.R. Civ.P. 12(b). Denials to a complaint in which such denial is required can only be done in an answer -- Fed.R.Civ.P. 8(b) -- and failure to make such denial is an admission. Fed.R.Civ.P. 8(d). Affirmative defenses and avoidance defenses such as estoppel, res judicata, immunity, and violations of Federal Rule of Civil Procedure 11 can only be raised by joinder to an answer. Fed.R.Civ.P. 8(c).

This Court is in accord with these laws and its decisions on these points cannot be ignored. On a motion to dismiss, the court MUST accept all averments in the complaint as true. Scheuer v. Rhodes, 416 U.S. 232, 236, 94 S.Ct. 1683, 1686, 40 L.Ed.2d 90 (1970). It cannot rule on the merits or allow affirmative defenses without an evidentiary hearing or trial. Scheuer v. Rhodes, 416 U.S. 232, 94 S.Ct. 1683, 40

L.Ed.2d 90 (1970); Polk Co. v. Glover, 305 U.S. 5, 9-19, 5 S.Ct. 15, 83 L.Ed. 6 (1938). It cannot grant absolute immunity without proof the official had a chance to prevent the crime. Howlett v. Rose, 493 U.S. 963, 110 S.Ct. 2430, 110 L.Ed.2d 332, 333 (1990). It cannot interpret Florida court decisions without examining the court records in accord with Florida law. Parker Bros. v. Fagan, 68 F.2d 616, 617 (5th Cir 1934); cert. den., 292 U.S. 638, 54 S.Ct. 719, 78 L.Ed. 1490. Further, on a motion to dismiss for lack of subject matter jurisdiction, the issue must be determined on a finding that the court lacks Constitutional or statutory authority. Baker v. Carr, 369 U.S. 186, 82 S.Ct. 691, 7 L.Ed.2d 663 (1962).

What the District Court's order says is that it lacks jurisdiction because some alleged courts in some alleged, but undisclosed cases, denied relief on some unknown cause; it denies an evidentiary hearing on the merits; and it does not believe Florida

courts will uphold the federal Constitution and law and neither will the lower District Court judge. (App. D, 6a-8a). The Eleventh Circuit Court of Appeals affirmed. (App. A & B, 1a-4a). This Court MUST grant the writ and review this matter to prevent a travesty of justice and insult to this Court's integrity and power.

2. DOES JUDICIAL INTEGRITY REQUIRE FEDERAL JUDGES TO ENFORCE THE FEDERAL LAW AND CONSTITUTION AGAINST JUDICIAL OFFICIALS AND/OR REQUIRE EQUAL TREATMENT TO BOTH NON-ATTORNEY PRO SE PLAINTIFF AND ATTORNEY REPRESENTED DEFENDANTS?

At a time when the integrity of the judiciary is at a high about equal to the level which King John faced at Runnymeade when he was forced to grant the Magna Carta; as King Charles I faced when he was forced by Cornwallis and the Long Parliament to re-issue the Magna Carta and to this time make it applicable to all people while at the same time outlawing such distasteful courts as the Star Chamber, Court of the High Commission, and ecclesiastic courts; as King George III found out when he discovered that the American colonies would no longer tolerate his colonial courts; and as the federal government found out this summer when a call for a constitutional convention fell only a few votes short, the People are tired of those who would like to see America go the way of

the Greek and Roman republics because the people did not protect their government from internal corruption.

Now this Court is confronted squarely with a question as to its integrity. The record on appeal will show that the trial court bent over backwards to aid the Respondents in winning their defenses. On the other hand, the record will show that the appellate court did the same for the Petitioner. It can then be argued that between the actions of both courts any favoritism which may have been shown in either court independently was off set in the other court. But that is not the issue. The issue is whether or not a judge is required to uphold the law even against fellow judicial brethern.

We know that this court has held that bias and lack of fairness in a judge is a violation of due process. See, e.g., Marshall v. Jerrico, Inc., 446 U.S. 238, 241, 100 S.Ct. 1610, 64 L.Ed.2d 182 (1980)

and Chapman v. State of California, 386 U.S. 18, 23, 87 S.Ct. 824, (1966). It is also known that dispite these warnings, Congress in 1990 passed Public Law 101-650, Title IV, S. 404, 104 Statute 5124 making the oath required of justices and judges under Title 28, United States Code Section 453 applicable to all justices and judges.

This code requires all federal judges and justices to uphold and defend the laws and Constitution of the United States. It is applicable hereto based on the Statement of the Case and the first question presented in this petition.

The issues then are: If a court's decision achieved by means contrary to law is valid, may it be relied on against those to whom it attacks even though they were never informed of the action or brought into it; and, does protecting what has been improperly seen as judicial integrity mean refusing to grant due process in the effort, to-wit: may a judge refuse

to perform his duties in accord with law?

While the courts have gone out of their way to destroy integrity in order to provide a doctrine of absolute immunity on the premise that this allows judges to decide difficult issues and to make what may be unpopular decisions, the Court is now asked to decide at what point even judges and justices must be held to atone to the law. Underlying this issue can be seen such things as what happens to those judges who may be ousted from the bench based on the lower courts' orders if later those orders are set off, and, has the doctrine of absolute immunity been too broadly applied so as to be creating a sense of distrust in the judicial system to such extent as to warrent a change in the doctrine from a carpet coverage to one which considers that from time to time there are cases which require individual and mitigating considerations?

3. IS A RULE 4(a)(4), FED.R.APP.P., BAR TO REVIEW AN AWARD OF FEES AND COSTS ON APPEAL CREATED BY A RULE 59, FED.R.CIV.P., MOTION ADDRESSING A SEPARATE AND INDEPENDENT ISSUE OF FEES AND COSTS DENIED AND SPECIFICALLY NOT APPEALED?

On April 27, 1993 the Petitioner filed a notice of appeal of the District Court's orders and judgments, such notice stating specific matters which are and are not appealed. (App. , 37a-39a). The Eleventh Circuit Court of Appeals then issued an order to all parties to explain why the Eleventh Circuit had jurisdiction since at the time appeal was taken there was a motion for clarification decided and filed but still not entered. Upon receiving and considering the responses of the Petitioner and those Respondents who submitted a response, the Eleventh Circuit declared that based on Budinich v. Becton Dickinson and Co., 486 U.S. 196, 108 S.Ct. 1717, 100 L.Ed.2d 178 (1988) it could entertain a review of the lower court's judgment but could not entertain a review of the award

of fees and costs. (App. C, 4a-6a). This is believed to be an overly broad and incorrect interpretation of Budinich by the circuit court which has national application and requires this Court's clarification.

Although this question can be made moot by this Court declaring that the District Court should never have dismissed the complaint at the point in proceedings when it did, making the issue of fees and costs moot because the District Court had no basis to make such a ruling; the issue still remains and should nevertheless be decided. This Court can do so under the "capable of repetition yet evading review" exception to mootness.

Strange had filed, in response to the District Court's October 23, 1992 Order (App. D, 6a-8a) authorizing a filing of a motion for fees (App. D, 8a), motions for fees and costs to cover the time from when he was brought under the court's jurisdic-

tion through the October 14, 1992 hearing. Jackson and R. Duncan also filed motions for fees. The Petitioner filed for clarification and rehearing. All of these motions were heard on March 25, 1993. At that hearing, Respondent Litus asked to be allowed to file a belated request for fees and Strange introduced a second motion for fees and costs to cover the time frame from the October 14, 1992 hearing to the March 25, 1993 hearing. The District Court granted Jackson's motion for fees and Strange's first motion for fees and costs, It denied Litus's request and denied R. Duncan's motion for fees. It also denied Strange's second motion for fees and costs.

Strange then filed a motion for clarification as to denial of his second motion for fees and costs. The District Court denied this on April 26, 1993 but the order was not entered until late in the day of April 28, 1993. Meanwhile, the Petitioner had to file for appeal by midnight of

April 28, 1993. Because Rule 4, Fed.R.App. P., allows for the appellant to seek review of the issues he wants to raise, he filed on April 27, 1993 a notice of appeal of the specific matters to be reviewed and therein stated that he appeals none of the orders denying fees and/or costs to the appellees. If they wanted those matters appealed, Rule 4, Fed.R.App.P., makes provision for them to seek their own review.

Based on these matters, Petitioner seeks clarification of the following:

1. Can a Rule 4(a)(4), Fed.R.App.P., bar be created by the filing of a Rule 59, Fed.R.Civ.P., motion in the trial court when the matter addressed by said motion pertains only to an issue specifically excluded in the notice of appeal from the review sought?

2. When a party files a Rule 59, Fed. R.Civ.P., motion addressing an issue that pertains only to a denial of fees and costs to him but having no effect on an award of

fees made to other parties, is a Rule 4(a)(4), Fed.R.App.P., created so that all awards of fees and costs are barred or does the finality test stated in Budinich allow for the review of all awards of fees and costs to those parties whose awards are not effected by the Rule 59 motion?

3. When a party makes two separate and distinct motions for fees and costs covering two separate time frames, one being for early action time and the second being for post-judgment time, and the court grants the first motion but denies the second; and the effected party moves for clarification under Rule 59, Fed.R.Civ.P., asking why his second request was denied but in no way seeking to challenge the finality of the awards already granted to him other than as to add to his profits, can review of the first motion award proceed under the finality test stated in Budinich or is a Rule 4(a)(4), Fed.R.App.P., bar created as to

review of all awards of fees and costs to that party pending entry of the decision in response to the Rule 59 motion?

Respectfully submitted,

Carl J. Duncan
Pro Se

APPENDIX A -- DECEMBER 21, 1994 JUDGMENT

DO NOT PUBLISH

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

NO. 93-2490
Non-Argument Calendar

D. C. Docket No. 92-40291-MMP

CARL J. DUNCAN,

Plaintiff-Appellant,

versus

RITA KAY DUNCAN, a/k/a Rita Kay Scott,
a/k/a Rita Kay Worley,
EDWARD M. JACKSON,
LAWRENCE M. LITUS,
GEOFFREY G. STRANGE,

Defendants-Appellees.

Appeal from the United States District Court for the Northern District of Florida

(December 21, 1994)

Before KRAVITCH, BIRCH and BARKETT, Circuit Judges.

BY THE COURT

Appellees, Geoffrey G. Strange and the Honorable Edward M. Jackson, have requested

sanctions against Duncan for filing a frivolous appeal. The motions for sanctions are hereby DENIED. However, appellant is cautioned that any further frivolous appeals might subject him to sanctions including the payment of costs including attorney fees. Strange's motion for a permanent injunction barring Duncan from "abusing the legal system" is also DENIED. See generally 28 U.S.C. S. 1295.

The District Court's dismissal for lack of jurisdiction is AFFIRMED.

* * * * *

APPENDIX B -- New Dec. 21, 1994 JUDGMENT

UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 93-2490
Non-Argument Calendar

District Court Docket No. 92-40291

CARL J. DUNCAN,

Plaintiff-Appellant,

versus

RITA KAY DUNCAN, a/k/a Rita Kay Scott
a/k/a Rita Kay Worley,
EDWARD M. JACKSON,
LAWRENCE M. LITUS,
GEOFFREY G. STRANGE,

Defendants-Appellees.

Appeal from the United States District Court for the Northern District of Florida

---

Before KRAVITCH, BIRCH and BARKETT, Circuit Judges.

J U D G M E N T

This cause came to be heard on the transcript of the record from the United States District Court for the Northern District of Florida, and was taken under submission by the Court upon the record and briefs on file, pursuant to Eleventh Circuit Rule 34-3;

UPON CONSIDERATION WHEREOF, it is now hereby ordered and adjudged by this Court that the order of the said District Court in this cause be and the same is hereby AFFIRMED.

It is further ordered that Plaintiff-Appellant pay to Defendants-Appellees the

costs on appeal to be taxed by the Clerk of this Court.

Entered: December 21, 1994

For the Court: Miguel J. Cortez, Clerk

By: /S/
Deputy Clerk

ISSUED AS MANDATE: 4/3/95

RE-ISSUED AS MANDATE: 6/12/95

* * * * *

APPENDIX C -- SEPTEMBER 23, 1993 ORDER DENYING APPEAL OF THE AWARD OF FEES AND COSTS.

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

NO. 93-2490

CARL J. DUNCAN,

Plaintiff-Appellant,

versus

RITA KAY DUNCAN,
a/k/a Rita Kay Scott,
a/k/a Rita Kay Young;
EDWARD M. JACKSON;
LAWRENCE M. LITUS;
GEOFFREY G. STRANGE;

Defendants-Appellees.

Appeal from the United States District Court for the Northern District of Florida

---

Before TJOFLAT, KRAVITCH and COX, Circuit Judges.

B Y T H E C O U R T:

Appellee Strange's Motion for Clarification did not toll the time for appealing from the district court's judgment on the merits in this action because it addressed only the award of fees and costs to him. See Budinich v. Becton Dickinson and Co., 486 U.S. 196, 108 S.Ct. 1717, 100 L.Ed.2d 178 (1988). Therefore, this appeal from the judgment on the merits MAY PROCEED. However, Strange's motion seeking reconsideration of the award of fees and costs tolled the time for appealing from those awards. See, e.g., Wielgos v. Commonwealth Edison Co., 892 F.2d 509 (7th Cir. 1989). Since this appeal was filed prior to the entry on the docket of the district court's order denying Strange's

motion, it was premature and ineffective with respect to the award of fees and costs. See Acosta v. Louisiana Department of Health & Human Resources. 478 U.S. 251, 106 S.Ct. 2876, 92 L.Ed.2d 192 (1986) (per curiam). Accordingly, appellant's appeal from the award of fees and costs is DISMISSED.

Entered Sept. 23, 1993.

* * * * *

APPENDIX D -- OCTOBER 23, 1992 DISTRICT COURT ORDER OF DISMISSAL

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

CARL J. DUNCAN,

Plaintiff,

v. CASE NO. TCA 92-40291-MMP

RITA KAY DUNCAN, et al.,

Defendants.
_____/

O R D E R

The court heard oral argument October 14, 1992 on each defendant's motion to

dismiss (Docs. 13, 17, 19, & 34). Plaintiff has filed an opposition to each (docs. 21, 22, 25, 26, 32, & 35), to which several defendants have responded (Docs. 28, 29). Also pending is plaintiff's motion for summary judgment (Doc. 30).[1] For the reasons stated below, all pending motions to dismiss are GRANTED with prejudice. Accordingly, this Court's decision renders all other motions moot.

This Court lacks subject matter jurisdiction to hear this case. Although plaintiff attempts to cast his cause as one premised on a violation of 42 U.S.C. S. 1983, this Court finds plaintiff's action to be yet another attempt to review the proceedings leading to the dissolution of his marriage. On this claim plaintiff has been heard and repeatedly denied relief by several state appellate courts as well as the Federal District Court for the Middle District of Florida.

Accordingly, it is

ORDERED:

1. This cause is DISMISSED WITH PREJUDICE against all defendants.

2. All other motions filed in this matter are moot.

3. Defendant, Judge Edward M. Jackson has absolute immunity for all conduct alleged in plaintiff's complaint.

4. Defendants are provided fifteen (15) days, from entry of this Order, to file any motions requesting attorneys' fees.

DONE AND ORDERED this 26th day of October, 1992.

/S/
United States District Judge

---

[1] Several other motions have been filed. This order effectively disposes of all remaining motions.

Filed October 26, 1992 at 6:00P.M.

* * * * *

APPENDIX E -- OCTOBER 14, 1992 TRANSCRIPT

IN THE UNITED STATES DISTRICT COURT [1]
FOR THE NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

CARL J. DUNCAN,

Plaintiff,

v.

RITA KAY DUNCAN, et al.,

Defendants.
_____/

CASE NO.: TCA-92-40291
Tallahassee, Florida
October 14, 1992

TRANSCRIPT OF PROCEEDINGS BEFORE
THE HONORABLE MAURICE M. PAUL
UNITED STATES DISTRICT JUDGE

APPEARANCES:

FOR THE PLAINTIFF: MR. CARL J. DUNCAN,
PRO SE
459 Inkwood Lane
Tallahassee, Florida
32310

FOR THE DEFENDANTS: MR. RIVERS BUFORD, JR.
Assistant Attorney
General
The Capitol, Suite
1501
Tallahassee, Florida
32399

MR. GEOFFREY G. STRANGE
Attorney at Law
312 S. Harbour City Blvd.
Suite 1
Melbourne, Florida 32901

MR. LAWRENCE M. LITUS
Attorney at Law
592 Montreal Avenue
Melbourne, Florida 32935

# # # # #

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REPORTED BY: CHRISTINE E. BORDENAVE
CERTIFIED COURT REPORTER
U.S. Official Reporter
P.O. Box 13533
Tallahassee, Florida
32317

* * *

# # # # #

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* * *

(Missing pages not pertinent here)

THE COURT: Mr. Duncan, there isn't going to be any more arguing --

MR. DUNCAN: Okay

THE COURT: -- because I'm going to dismiss this case with prejudice as to all defendants. You have had your time in the State Court. You have been divorced. You have no federal independent jurisdiction here.

* * *

* * * * *

APPENDIX F -- FLORIDA SUPREME COURT ORDER

SUPREME COURT OF FLORIDA

WEDNESDAY, JULY 3, 1991

CARL J. DUNCAN,

Petitioner,

v. CASE NO. 78,004

JOE A. COWART, JR, CHIEF JUDGE, etc.,

Respondent.

The petitioner in the above cause has filed a Petition for Writ of Mandamus, and the same having been duly considered, it is ordered that said Petition be and the same is hereby denied.

OVERTON, Acting C.J., BARKETT, GRIMES, KOGAN and HARDING, JJ.,

A True Copy H

TEST: (SEAL)

cc: Carl J. Duncan, Tallahassee
Hon. Joe A. Cowart, Jr., Chief Judge

Sid J. White
Clerk, Supreme Court

* * * * *

APPENDIX G -- MANDATE, FIFTH DISTRICT COURT OF APPEAL

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT JULY TERM 1990

CARL J. DUNCAN,

Appellant,

v.

CASE NO. 90-603

RITA KAY DUNCAN,

Appellee.

_____/

Decision filed November 6, 1990

Appeal from the Circuit Court
for Brevard County,
Edward M. Jackson, Judge.

Carl J. Duncan, Tallahassee, Pro Se.

No Appearance for Appellee.

PER CURIAM.

AFFIRMED.

SHARP, W., PETERSON, and GRIFFIN, JJ.,

concur.

* * * * *

APPENDIX H -- FIFTH DISTRICT COURT OF APPEAL ORDER CONCURRING WITH APPELLANT'S MOTION FOR CLARIFICATION INTERPRETATION OF THE MANDATE

IN THE DISTRICT COURT OF APPEAL OF THE

STATE OF FLORIDA

FIFTH DISTRICT

CARL J. DUNCAN,
Appellant,

v. Case No. 90-603

RITA KAY DUNCAN,
Appellee.
_____/

DATE: December 11, 1990

BY ORDER OF THE COURT:

ORDERED that Appellant's MOTION FOR CLARIFICATION, filed November 15, 1990, is denied.

I hereby certify that the foregoing is
(a true copy of) the original court order.

FRANK J. HABERSHAW, CLERK

BY: /S/
Deputy Clerk)

(COURT SEAL)

cc: Carl J. Duncan
Rita Kay Duncan a/k/a Rita Kay Scott

* * * * *

APPENDIX I -- FIFTH DISTRICT COURT OF APPEAL ORDER DENYING MOTION TO CORRECT ORDER

IN THE DISTRICT COURT OF APPEAL OF THE

STATE OF FLORIDA

FIFTH DISTRICT

CARL J. DUNCAN,
Appellant,

v. Case No. 90-603

RITA KAY DUNCAN,
Appellee.
_____/

DATE: December 21, 1990

BY ORDER OF THE COURT:

ORDERED that Appellant's MOTION TO CORRECT ORDER, filed December 19, 1990 is denied.

I hereby certify that the foregoing is (a true copy of) the original court order.

/S/

FRANK J. HABERSHAM, CLERK

BY: _____
Deputy Clerk

(COURT SEAL)

cc: Carl J. Duncan

* * * * *

APPENDIX J -- MARCH 29, 1991 FLORIDA EIGHTEENTH JUDICIAL CIRCUIT ORDER OF DISMISSAL FOR LACK OF SUBJECT MATTER JURISDICTION AB INITIO AND AUTHORIZING COLLATERAL ATTACK

IN THE CIRCUIT COURT IN AND FOR BREVARD COUNTY, FLORIDA

CASE NO. 89-12080-FD-D

RITA KAY DUNCAN,
a/k/a RITA KAY SCOTT,

Petitioner,

vs.

CARL J. DUNCAN,

Respondent.
_____/

ORDER OF DISMISSAL

Various motions by the Respondent, CARL J. DUNCAN, having come on for consideration before the undersigned Judge on March 27, 1991 and the Court having reviewed the record in this cause and having heard presentations by the Petitioner and Respondent, and being otherwise fully advised in the premises, finds that the

Court does not have any subject matter jurisdiction over matters presented by the Respondent.

The premises considered, it is

ORDERED AND ADJUDGED as follows:

1. This Court dismisses the post-judgment matters presented by the Respondent for lack of subject matter jurisdiction, without prejudice to the Respondent presenting these matters to another Court.

2. The Final Judgment has been entered in this cause and the same affirmed by the District Court of Appeal for the Fifth District, thereby depriving the Court of jurisdiction as to the matters asserted by the Respondent.

DONE AND ORDERED in Chambers at Rockledge, Brevard County, Florida, this 29th day of March, 1991.

/S/
EDWARD M. JACKSON
Circuit Judge

Copies furnished to:

Carl J. Duncan
459 Inkwood Lane
Tallahassee, Florida 32310

Rita Kay Scott
3004 Morningside Drive
Tallahassee, Florida 32301

Geoffrey G. Strange, Esquire
1250 Eau Gallie Blvd., Suite G
Melbourne, Florida 32935

/S/
Judicial Assistant

Date: 4-1-91

* * * * *

APPENDIX K -- MAY 23, 1990 EIGHTEENTH JUDICIAL CIRCUIT FINAL POST-JUDGMENT ORDER DECLARING THE FINAL JUDGMENT DISSOLVING MARRIAGE UNENFORCEABLE FOR WANT OF SUBJECT MATTER JURISDICTION AB INITIO

IN THE CIRCUIT COURT IN AND FOR BREVARD COUNTY, FLORIDA

CASE NO. 89-12080-FD-D

RITA KAY DUNCAN,

Petitioner,

vs.

CARL J. DUNCAN,

Respondent.

_____/

ORDER

All of the pending Motions by and between the Petitioner and the Respondent together with the Motions separately filed by petitioner's attorney, having come on for consideration before the undersigned Judge on May 23, 1990, with GEOFFREY GREY STRANGE, ESQUIRE and Respondent, CARL J. DUNCAN, both being present by telephone, and the Court having examined the record in this cause and having determined that an Appeal has been filed, and having further advised the parties of the limited jurisdiction of this Court during the pendency of the appeal, and the Court having heard the arguments of the respective parties and being otherwise fully advised, it is

ORDERED AND ADJUDGED as follows:

1. The Court will allow GEOFFREY GREY STRANGE, ESQUIRE, to withdraw as counsel of record for the Petitioner upon mailing to

the undersigned Judge for filing with this case a written consent by Petitioner to such withdrawal.

2. Petitioner's attorney having announced that Respondent has paid him the fees required under the Final Judgment, has withdrawn the Motion for Contempt and eliminated the necessity of the hearing thereon.

3. The Motion by Petitioner's attorney to tax additional fees and costs against the Respondent because of the Respondent's post-judgment motions and the like should be, and the same is, hereby denied.

4. Respondent's Motion for fees and expenses post-judgment is likewise denied.

5. All of the other Motions and requests for relief pending at this time should be, and the same are, hereby each denied.

DONE AND ORDERED in Chambers at Rockledge, Brevard County, Florida, this 23rd

day of May, 1990.

EDWARD M. JACKSON
Circuit Judge

Copies furnished to:

Geoffrey Grey Strange, Esquire
1250 Eau Gallie Blvd., Suite G
Melbourne, Florida 32935

Carl Duncan
459 Inkwood Lane
Tallahassee, Florida 32310

Rita Kay Scott
c/o Winner Validation
250 Merriott Drive
Tallahassee, Florida 32399-4027

/S/
Judicial Assistant

* * * * *

APPENDIX L -- FEBRUARY 15, 1990 EIGHTEENTH JUDICIAL CIRCUIT NULL AND VOID FINAL JUDGMENT DISSOLVING MARRIAGE

IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT IN AND FOR BREVARD COUNTY, FLORIDA

FAMILY LAW DIVISION

CASE NO. 89-12080-FD-D

IN RE: THE MARRIAGE OF

RITA DAY (sic) DUNCAN,

Petitioner,

CARL J. DUNCAN,

Respondent.

_____/

FINAL JUDGMENT DISSOLVING MARRIAGE,

Based on evidence heard and stipulations considered on the 2nd day of February, 1990, it is

ORDERED AND ADJUDGED as follows:

1. JURISDICTION: This Court has jurisdiction of the parties and the subject matter of this proceeding.

2. DISSOLVING: The marriage between the above-named persons is irretrievably broken and the bonds of marriage between them are dissolved.

3. MOTION TO STAY: Respondent's motion to Stay the Proceedings due to Respondent's pending change of venue efforts is denied. The Court finding no prejudice in hearing this matter in Brevard County, and Respondent's position on venue was

waived by this filing a previous answer to the Petition for Dissolution of Marriage. MS (underscore added by Petitioner to denote change in the judgment not approved by the court.)

4. ALIMONY: That no alimony is due the Petitioner from Respondent nor is there alimony due the Respondent from Petitioner.

5. EQUITABLE DISTRIBUTION OF MARITAL ASSETS:

a) Upon stipulation by Petitioner, the Court orders Petitioner to relinquish to Respondent all her rights to and interest in American Suncoast Inc. and Paragon Consultants, Inc. as an equitable distribution of marital assets.

b) Petitioner has no equitable interest in the building valued at approximately $2000.00 but Petitioner's son Scott Worley may have an interest which he may pursue by separate action against or agreement with Respondent.

c) Petitioner is ordered to relin-

quish all rights, title, and interest in the Tandy Computer and accessories now in Respondent's possession. Petitioner shall provide a written release of her interest to Respondent within 10 days of this Order's date. Should the release not be issued, this Order will serve to transfer such interest to Respondent. The Tandy Computer and accessories are valued at $1,600.00. Respondent is ordered to pay 1/2 that amount, $800.00, to Petitioner within 60 days of this Order's date.

6. DEBTS: a) Petitioner shall pay all her debts reflected in her financial affidavit filed November 22, 1989 and hold Respondent harmless therefore.

b) Respondent shall pay all his debts reflected in his Financial Affidavit filed December 1, 1989 and hold Petitioner harmless therefore.

7. MUTUAL RESTRAINING ORDER: a) each party is hereby restrained and temporarily enjoined from harassing, inter-

fering with, threatening, molesting, touching, striking, beating, or otherwise assualting or harming the other;

b) neither party shall contact the other's employer nor telephone nor visit the other at the other's place of business except with the provable consent of the other;

8. NAME CHANGE: Petitioner's maiden name is hereby restored and she shall be known as RITA KAY SCOTT hereafter.

9. SUIT COSTS/ATTORNEY'S FEES - COSTS: Petitioner's attorney fees of $3000.00 based on 30 hours @$100.00 and costs of $85.00 are reasonable. Respondent is ordered to pay $1000.00 to Petitioner's attorney, Geoffrey G. Strange, finding Respondent in a superior financial position. Commencing March 1, 1990, Respondent is to remit 10 monthly payments of $100.00 to Geoffrey Grey Strange at 1250 Eau Gallie Blvd., Suite G., Melbourne, FL 32935.

10. RETAINED JURISDICTION - NOTICE: This Court retains jurisdiction of this cause and the parties for all legal purposes and service of notice of further proceedings may be made by mail on either party.

DONE AND ORDERED in Chambers at the Brevard County Branch Courthouse, Rockledge, Florida, this 15th day of Feb , 1990.

/S/
CIRCUIT COURT JUDGE

CONFORMED COPIES TO:

Rita Kay Scott, Petitioner
Geoffrey G. Strange, Attorney for Petitioner
Carl J. Duncan, Respondent

* * * * *

APPENDIX M -- EXCERPTS FROM FEBRUARY 2, 1990 STATE TRIAL COURT

IN THE CIRCUIT COURT IN THE EIGHTEENTH JUDICIAL CIRCUIT IN AND FOR BREVARD COUNTY, FLORIDA

CIVIL DIVISION

CASE NUMBER: 89-12080-FD-D

Rita Duncan,

Petitioner,

versus

Carl J. Duncan,

Respondent.

_____/

TRANSCRIPT OF NON JURY TIRAL

The transcript of the Non Jury Trial taken in the above-styled cause, at the Brevard County (Branch) Courthouse, located at 1040 South Florida Avenue, Rockledge, Florida on the second day of February, 1990 before the Honorable Edward M. Jackson.

*****

GERARD F. RYAN & ASSOCIATES
OFFICIAL COURT REPORTERS
REGISTERED PROFESSIONAL REPORTERS

BREVARD COUNTY COURTHOUSE
P.O. BOX 204
ROCKLEDGE, FLORIDA 32955

(407) 636-4450

# # # # #

A P P E A R A N C E S

GEOFFREY G. STRANGE, ESQ.,
of Burk, Strange & Meyer, P.A.
1250 East Eau Gallie Boulevard
Melbourne, Florida 32935

Appearing for
Plaintiff

CARL J. DUNCAN

Appearing for
Respondent, pro se

JILL WELSKO, Deputy Official Court
Reporter

* * * * *

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59

THE COURT: All right. Well, I realize your're representing yourself. But the Petition was filed on August two, 1989 in this court.

And then you filed an answer twenty-one, 1989, as to the Petition, August twenty-one, 1989.

MR. DUNCAN: I filed the first re-request for dismissal.

THE COURT: And there was also filed at the sametime (sic) a petition for dismissal and a change of venue.

And then the change of venue motion was filed August twenty-eight.

I'm just looking at the court stamp on these things.

And we have a ruling of the Court that the Petitioner initially seeks the venue, and it's incumbent on the one who seeks to change it.

That would be one of the first things that they would seek.

And in filing a motion for response to the petition, that should bring on to the Court early on, and good authority that you

# # # # #

may be deemed to have waived that by filing an answer and then later filing a request to posture venue at another place.

And that was the reason I was asking you what real advantage, if the marriage is irretrievably broken and in the view of one party it's over with.

* * *

But in most instances where it's just two adults, and that's all that was involved, if one of them feels like the marriage is irretrievably broken in Tallahassee or here, its going to be the Court's ruling that the dissolution would take place.

* * *

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So, the Court will deny your motion for change of venue both on the basis that I don't think it would do anything more than to delay the action. I think it's been waived technically.

And I don't see that there is any prejudice at all in the rather simple issues in this case in going ahead and not expending anymore legal fees and incurring

anymore emotional investments than what's already taken place.

* * * * *

APPENDIX N -- MAY 23, 1995 ORDER DENYING REHEARING IN THE ELEVENTH CIRCUIT COURT OF APPEALS

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 93-2490 Filed May 23, 1995

CARL J. DUNCAN,

Plaintiff-Appellant,

versus

RITA KAY DUNCAN,
a/k/a Rita Kay Scott,
a/k/a Rita Kay Young,
EDWARD M. JACKSON,
LAWRENCE M. LITUS,
GEOFFREY G. STRANGE,

Defendants-Appellees.

Appeal from the United States District Court for the Northern District of Florida

---

ON PETITION(S) FOR REHEARING

(MAY 23 1995)

BEFORE: KRAVITCH, BIRCH and BARKETT,

Circuit Judges.

PER CURIAM:

The petition(s) for rehearing filed by appellant, CARL J. DUNCAN, is denied.

ENTERED FOR THE COURT:

/S/
United States Circuit Judge

ORD-41

* * * * *

APPENDIX O -- MARCH 30, 1993 DISTRICT COURT CORRECTED JUDGMENT

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

CARL J. DUNCAN,
Plaintiff,
v. CASE NO. TCA: 92-40291/
RITA KAY DUNCAN, et al., MMP
Defendant(s)

CORRECTED
JUDGMENT IN A CIVIL CASE

This action came on for trial before the Court the Honorable Maurice M. Paul, Dis-

trict Judge, presiding, and the issues having been duly heard and the Court having duly rendered its decision.

It is ORDERED and ADJUDGED the (sic) the plaintiff CARL J. DUNCAN take nothing, that the action be dismissed on the merits, and that the defendant EDWARD M. JACKSON recover from the plaintiff CARL J. DUNCAN, $5,375.00 in Attorney's Fees. That defendant GEOFFREY G. STRANGE recover from CARL J. DUNCAN the sum of $3,895.50 in attorney's fees and $161.06 in costs. Defendant JACKSON's award is to be forwarded to the State of Florida, Department of Legal Affairs.

DATED this 30th day of MARCH, 1993.

/S/

For MARVIN S. WAITS
CLERK OF COURT
by Charles R. Cook
Deputy Clerk

Copies mailed to: Filed MAR 30 PM 3:15

Carl Duncan, Rivers Buford,
Geoffry Strange, Rita Duncan
Lawrence Litus

* * * * *

APPENDIX P -- MARCH 26, 1993 DISTRICT COURT ORDER DENYING CLARIFICATION AND REHEARING, AND DENYING AND AWARDING FEES AND COSTS

IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

CARL J. DUNCAN,

Plaintiff,

v. CASE No. TCA 92-40291/MMP

RITA KAY DUNCAN, et al.,

Defendants.
_____/

O R D E R

On October 25, 1992, this Court dismissed with prejudice plaintiff's complaint against all defendants, finding plaintiff's complaint to be without merit and that this Court lacked jurisdiction. That Order provided defendants with fifteen days to apply for attorneys' fees (Doc. 45). The Court

heard oral argument March 25, 1993 on: defendant Jackson's application for award of attorneys' fees (doc. 46), defendant Strange's motion for Rule 11 sanctions including attorneys' fees and costs (doc. 49), and defendant Rita Kay Duncan's motion for attorneys' fees and costs (Doc. 50). The Court also considered defendant Strange's motion for attorneys' fees and costs filed in open court as well as defendant Litus's motion for fifteen days to

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apply for attorneys' fees. Also pending are plaintiff's motions: (1) for a rehearing or for an amended judgment (doc. 52), for a clarification (doc. 54), and for attorneys' fees and costs.

Plaintiff's motions for rehearing and

for clarification are DENIED. Motions for attorneys' fees and costs, filed by defendants Jackson and Strange are GRANTED. Motion for attorneys' fees filed by defendant Rita Kay Young (nee Duncan) is DENIED. Defendant Litus's oral motion for an additional fifteen (15) days to file a request for attorneys' fees is DENIED. Plaintiff's motion for attorneys' fees is DENIED.

This Court finds plaintiff's complaint to have been meritless since its inception, and plaintiff's actions to have been and to continue to be vexatious. The award of attorneys' fees and costs to defendants Jackson and Strange is founded on both prevailing party principles as well as Rule 11. Further, this Court finds the hours expended, and rates and costs proffered in Jackson's and Strange's affidavits to be reasonably incurred. Defendant Jackson's award is to be forwarded to the State of Florida Department of Legal Affairs.

Accordingly, it is

ORDERED:

1. Plaintiff's motions for rehearing and for clarification are DENIED.

2. Defendants Jackson's and Strange's motions for attorneys' fees and costs are GRANTED. Defendant Jackson is

# # # # #

awarded $5,375.00. Defendant Strange is awarded $3895.50 in attorneys' fees and $161.06 in costs.

3. Defendant Rita Kay Young's (nee Duncan's) motion for attorneys' fees is DENIED.

4. Defendant Litus's oral motion for an additional fifteen (15) days to file a request for attorneys' fees is DENIED.

5. Plaintiff's motion for attorneys' fees is DENIED.

6. All other motions filed in this matter are rendered moot.

7. Defendant Jackson's award is to

be forwarded to the State of Florida Department of Legal Affairs.

8. The Clerk is directed to enter judgment in this matter.

DONE AND ORDERED this 26th day of March, 1993.

/S/
MAURICE M. PAUL, CHIEF JUDGE

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* * * * *

APPENDIX Q -- NOTICE OF APPEAL

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF FLORIDA TALLAHASSEE DIVISION

USDC CASE NO.: 92-4506-MP

CARL J. DUNCAN,
Plaintiff,
v.
RITA KAY DUNCAN, a/k/a RITA KAY SCOTT, a/k/a RITA KAY YOUNG, EDWARD M. JACKSON, LAWRENCE M. LITUS, and

NOTICE OF APPEAL

GEOFFREY G. STRANGE,)
)
Defendants.)
/

NOTICE IS HEREBY given that CARL J. DUNCAN, plaintiff, above named, hereby appeals to the United States Court of Appeals for the Eleventh Circuit from the Orders dated October 26, 1992 and March 26, 1993 and the Corrected Judgment in a Civil Case dated March 30, 1993 entered in this action on November 3, 1992; March 29, 1993 and March 30, 1993 respectively. The Order dated October 26, 1992 dismissing this action was arrested by a timely motion for rehearing. The Order dated March 26, 1993 denied reinstatement of the action, amended the Order dated October 26, 1992 and awarded attorneys' fees and costs to defendants EDWARD M. JACKSON and GEOFFREY G. STRANGE, said Order corrected sua sponte March 30, 1993. The plaintiff will also seek review of the Order dated October 8, 1992 which denied his Motion for Establishing as Admitted Requests for Admission.

Plaintiff does not appeal the denial of attorneys' fees and costs to defendants RITA KAY DUNCAN and LAWRENCE M. LITUS nor denial of the second motion for attorney fees and costs by defendant GEOFFREY G. STRANGE.

/S/
CARL J. DUNCAN
Pro Se
459 Inkwood Lane
Tallahassee, Florida 32310
(904) 674-5901, ext. 172

* * * * *

APPENDIX R -- EXCERPTS FROM COMPLAINT FILED IN DISTRICT COURT

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF FLORIDA

CIVIL ACTION
FILE NO. 92-40291-MP

CARL J. DUNCAN,

Plaintiff,

v.

RITA KAY DUNCAN, a/k/a

RITA KAY SCOTT, a/k/a)
RITA KAY YOUNG,)
EDWARD M. JACKSON,)
LAWRENCE M. LITUS, and)
GEOFFREY G. STRANGE,)
)
Defendants.)
_____/

COMPLAINT FOR CIVIL RIGHTS VIOLATIONS AND AWARD OF DAMAGES

COMES NOW the Plaintiff, CARL J. DUNCAN, Pro Se, in the above styled case, makes this his COMPLAINT FOR CIVIL RIGHTS VIOLATIONS AND AWARD OF DAMAGES and as grounds shows:

1. The cause for action accrued in Leon County, Florida; all difendants are residents of the State of Florida and are sui juris in their proper person.

2. The action arises under the Act of 1871, 93 Stat. 1284, U.S.C. Title 42, ss. 1983 and/or 1985 thereby invoking this Court's "original jurisdiction" and jurisdiction under an "act of Congress".

3. Plaintiff demands trial by jury.

4. Plaintiff is entitled to relief based on the following facts,

* * *

k. Being unable to afford legal counsel and being untrained in the practice and procedure of law, which was known to RITA KAY DUNCAN and is believed to be one reason she went 300 miles to commence the dissolution action, CARL J. DUNCAN replied to the petition by filing jointly an answer and petition (motion) to dismiss, both of which noted that the action was without authority of law and the court had no jurisdiction in that the notary affidavit attached to the petition is both attested to and signed by the same person in violation of Florida statutes; that the affidavit/certificate claims that RITA KAY DUNCAN filed the petition and commenced the action while in fact she did not which is a violation of Florida statutes. . . .

* * *

n. In or about late September, 1989 RITA KAY DUNCAN approached GEOFFREY G. STRANGE to recruit his aid and assistance

in the illegal action of Case No. 89-12080-FD-D. This GEOFFREY G. STRANGE agreed to do as witness fact he first started case tampering (if the case had been with authority of law) by setting to hearing (EXHIBIT 5, NOTICE OF HEARING, attached) and then serving on CARL J. DUNCAN a notice of appearance (EXHIBIT 6, NOTICE OF APPEARANCE, attached). . . .

* * *

s. At the "trial" on February 2, 1990, EDWARD M. JACKSON. . . . He stated that irregardless of fact he had no jurisdiction, he would not allow the action to be taken to a court with jurisdiction, especially the Florida Second Judicial Circuit, because they too would grant the petition for dissolution exactly as it was, thus implying that the Second Judicial Circuit is also corrupt. . . .

* * *

w. On July 3, 1991 the Florida Supreme Court agreed that the final judg-

ment in Duncan v. Duncan, Case No. 89-12080-FD-D (Brevard) is null and void ab initio for want of subject matter jurisdiction. . . .

* * *

6. Based upon events and occurences known to CARL J. DUNCAN and believed by him for good reason to be known by all defendants, it is CARL J. DUNCAN's honest and sincere belief that he cannot receive a fair and honest trial on the merits to redress injury re the matters herein in the Florida judicial system.

* * * * *

APPENDIX S -- LEGAL AUTHORITIES

Amend. 14 S. 1, U. S. Const.

All persons born or naturalized in the United States , and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or en-

force any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Title 28 U.S.C. S. 1343(a) - (in pertinent part)

(a) The district court shall have original jurisdiction of any civil action authorized by law to be commenced by any person:

(1) To recover damage to his person or property, or because of the deprivation of any right or privilege of a citizen of the United States by any act done in furtherance of any conspiracy mentioned in section 1985 of Title 42;

(2) To recover damages from any person who fails to prevent or to aid in preventing any wrongs mentioned in section 1985 of Title 42 which he has knowledge were about to occur and power to prevent;

(3) To redress the deprivation, under color of any State law, statute ... regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States;

(4) To recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights . . . .

Title 18 U.S.C. S. 1341 (in pertinent part)

Whoever, having devised or intending to devise any scheme . . . to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises . . . dispose of . . . exchange . . . give away, distribute, supply, or furnish or procure for unlawful use and counterfeit or spurious . . . obligation, security, or other arti-

cle, or anything represented to be or intimated or held out to be such counterfeit or spurious article, for the purpose of executing such scheme . . . or attempting so to do, places in any post office or authorized depository for mail matter, any matter or thing whatever to be sent or delivered by the Postal Service . . . any such matter or thing, or knowingly causes to be delivered by mail accordingly to the direction thereon, or at the place at which it is directed to be delivered by the person to whom it is addressed, any such matter or thing, shall be fined not more than $1,000 or imprisoned not more than five years, or both.

Title 42 U.S.C. S. 1983 (in pertinent part)

Every person who, under color of any statute . . . regulation, custom, or usage, of any State . . . subjects, or causes to be subjected, any citizen of the United States or other person within the juris-

diction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

Title 42 U.S.C. S. 1985 (2&3) (in pertinent part)

(2) If two or more persons in any State . . . conspire to deter, by force, intimidation, or threat, any party . . . in court of the United States from attending such court . . . or to injure such party . . . in his person or property on account of his having so attended or testified ... or if two or more persons conspire for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any State . . . with intent to deny to any citizen the equal protection of the laws, or to injure him or his property for lawfully enforcing, or attempting

to enforce, the right of any person, or class of persons, to the equal protection of the laws;

(3) If two or more persons in any State . . . conspire . . . for the purpose of depriving, either directly or indirectly, any person . . . of the equal protection of the laws, or of equal privileges or immunities under the laws . . . in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against any one or more of the conspirators.

Chapter 117, Fla. Stat. (in pertinent part)

S. 117.01(5) . . . and it shall be deemed unlawful for a notary public to notarize his own signature.

S. 117.03(2) Any person making a false oath before a notary public shall be guilty of perjury and be subject to the penalties . . . .

S. 117.09

(1) Every notary public in the state shall require reasonable proof of the identity of the person whose signature is being notarized and such person must be in the presence of the notary public at the time the signature is notarized. Any notary public violating the above provision shall be guilty of a misdemeanor of the second degree. . . . It shall be no defense under this section that the notary public acted without intent to defraud.

(2) Any notary public in this state who shall falsely or fraudulently take

any acknowledgement of any instrument as a notary public or who falsely or fraudulently makes any certificate as a notary public or who falsely takes or receives an acknowledgment of the signature on any written instrument shall be guilty of a felony of the third degree.

S. 117.01

(1) The Governor may appoint as many notaries public as he shall deem necessary. . . .

(2)(a) Application for appointment shall be . . . in a form prescribed by the Department of State. . . .

(4) Every notary public shall . . . give bond to the Governor. . . . The bond shall be approved and filed with the Department of State.

S. 817.155, Fla. Stat. (in pertinent part)

A person may not, in any matter within the jurisdiction of the Department of State, knowingly and willfully falsify or

conceal a material fact, make any false, fictitious, or fraudulent statement or representation, or make or use any false document, knowing the same to contain any false, fictitious, or fraudulent statement or entry. A person who violates this section is guilty of a misdemeanor of the second degree.

S. 817.38, Fla. Stat. (in pertinent part)

(1) CIRCULATION PROHIBITED -- It is unlawful for any person . . . to send ... or cause to be sent or delivered any letter, paper, document, notice of intent to bring suit, or other notice or demand, which simulates a . . . complaint . . . or other court process . . . with intent to lead the recipient . . . to believe that the same is genuine, for the purpose of obtaining any money or thing of value.... The sending of such simulating document shall be prima facie evidence of such intent, and it shall be no defense to show

that the document bears any statement to the contrary. . . .

(2) EVIDENCE OF DELIVERY -- In prosecutions for violation of this section, the prosecution may show that the simulating document was deposited in the post office for mailing . . . and such showing shall be sufficient proof of the sending or delivery.

(3) VENUE -- Any person violating this section may be tried therefor in ... the county where the same was received.

(5) PENALTIES -- Any person . . . violating this section shall be guilty of a misdemeanor of the second degree . . . .

S. 817.39(1), Fla. Stat. (in pertinent part)

Any person . . . who shall print, for the purpose of . . . distribution and for use in the state, or who shall circulate . . . any letter, paper, document . . . or other notice or demand . . . is guilty of a misdemeanor of the second degree. . . .

Chapter 837, Fla. Stat. -- PERJURY

837.011 In this chapter, unless a different meaning plainly is required:

(1) "Official proceeding" means a proceeding heard, or which may be or is required to be heard, before any . . . judicial . . . official authorized to take evidence under oath, including any . . . notary . . . .

(2) "Oath" includes affirmation or any other form of attestation required or authorized by law by which a person acknowledges that he is bound in conscience or law to testify truthfully in an official proceeding or other official matter.

(3) "Material matter" means any subject, regardless of its admissibility under the rules of evidence, which could affect the course or outcome of the proceeding. Whether a matter is material in a given factual situation is a question of law.

837.012(a) Whoever makes a false statement, which he does not believe to be true, under oath, not in an official proceeding, in regard to any material matter shall be guilty of a misdemeanor of the first degree. . . .

837.02(a) Whoever makes a false statement, which he does not believe to be true, under oath in an official proceeding in regard to any material matter shall be guilty of a felony of the third degree.

837.021(1) Whoever, in one or more official proceedings willfully makes two or more material statements under oath when in fact two or more of the statements contradict each other is guilty of a felony of the third degree . . . .

837.021(3) In any prosecution for perjury by contradictory statements under this section, it is not necessary to prove which, if any, of the statements is not true.

837.06 Whoever knowingly makes a

false statement in writing with the intent to mislead a public servant in the performance of his official duty shall be guilty of a misdemeanor of the second degree. . . .

Fed.R.Civ.P. 12(b) (in pertinent part)

Every defense, in law or fact, to a claim for relief in any pleading . . . shall be asserted in the responsive pleading thereto if one is required, except the following defenses may at the option of the pleader be made by motion: (1) lack of jurisdiction over the subject matter; (2) lack of jurisdiction over the person; (3) improper venue, (4) insufficiency of process, (5) insufficiency of service of process, (6) failure to state a claim upon which relief can be granted, (7) failure to join a party under Rule 19. A motion making any of these defenses shall be made before pleading if a further pleading is permitted. * * * If, on a motion asserting

the defense numbered (6) to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.

Title 28 U.S.C. S. 453

Each justice or judge of the United States shall take the following oath or affirmation before performing the duties of his office: "I, _____ _____, do solemnly swear (or affirm) that I will administer justice without respect to persons, and do equal right to the poor and to the rich, and that I will faithfully and impartially discharge and perform all the duties incumbent upon me as _____ under the Constitution and laws of the United States. So help me God."